

House Bill 1145

By: Representatives Stephens of the 164th, Roberts of the 154th, Burns of the 157th, Cheokas of the 134th, Battles of the 15th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income tax, so as to provide for an income tax credit for new qualified freight rail infrastructure property and qualified locomotive property; to provide for definitions; to provide for conditions and limitations; to provide for powers, duties, and authority of the state revenue commissioner with respect to the foregoing; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income tax, is amended by adding a new Code section to read as follows:

"48-7-40.29.

(a) As used in this Code section, the term:

(1) 'Intermodal transfer or transload facility or terminal' means a facility or terminal primarily utilized in the transfer of freight between rail and any other mode of transportation.

(2) 'Interoperability' means the ability to control locomotives of the host railroad and tenant railroad to communicate with and respond to the positive train control system, including uninterrupted movements over property boundaries, within the meaning of 49 U.S.C.A. Section 20157.

(3)(A) 'New qualified freight rail infrastructure property' means qualified freight rail infrastructure property:

(i) The construction or erection, or in the case of bridges and tunnels, any eligible bridge or tunnel replacement or expansion pursuant to subparagraph (B) of this paragraph, of which is completed by the taxpayer after January 1, 2011; or

(ii) Which is acquired by the taxpayer after January 1, 2011, but only if the original use of such property commences with the taxpayer.

(B) Such term shall not include property which is replacing existing property if the property is located at the site of the existing property. The limitation of this subparagraph shall not apply to:

(i) The replacement or expansion of a bridge or tunnel to allow for additional clearance, track, or other capacity enhancement where such clearance, track, or other capacity enhancement did not previously exist; or

(ii) The replacement of any qualified freight rail infrastructure property with any component of a positive train control system.

(4) 'Positive train control system' means any system, or combination of systems, designed to prevent train-to-train collisions, overspeed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position, or any other system or technology otherwise within the meaning of 49 U.S.C.A. Section 20157.

(5)(A) 'Qualified freight rail infrastructure property' means property used in the movement of freight by rail:

(i) The cost of which is chargeable to a capital account; and

(ii) Which constitutes:

(I) Railroad grading or tunnel bore;

(II) Tunnels or subways;

(III) Track, including ties, rails, ballast, or other track material;

(IV) Bridges, trestles, culverts, or other elevated or submerged structures;

(V) Terminals, yards, roadway buildings, fuel stations, or railroad wharves or docks, including fixtures attached thereto, and equipment used exclusively therein;

(VI) Positive train control systems or costs incurred to provide for interoperability of such systems with other positive train control systems or with other railroad signal, communication, or operating systems;

(VII) Railroad signal, communication, or other operating systems, including components of such systems that must be installed on locomotives or other rolling stock;

(VIII) All improvements made to implement and maintain a positive train control system contemplated in 49 U.S.C.A. 20101 et seq.; or

(IX) Intermodal transfer or transload facilities or terminals, including fixtures attached thereto, and equipment used exclusively therein.

(B) Such term shall not include:

(i) Land;

64 (ii) Rolling stock, including locomotives; or

65 (iii) Property used predominantly outside the United States.

66 (6)(A) 'Qualified locomotive property' means a locomotive which:

67 (i) Meets the Environmental Protection Agency's emission standards for locomotives
68 and locomotive engines as in effect on December 31, 2005; and

69 (ii) Is owned by, or leased to, a taxpayer which meets the capacity expansion
70 requirement of subparagraph (B) of this paragraph for the taxable year in which the
71 locomotive is placed in service.

72 (B) A taxpayer meets the requirements of this subparagraph with respect to any
73 locomotive only if, on the last day of the taxable year in which such locomotive is
74 placed in service, the total horsepower of all locomotives owned by, or leased to, the
75 taxpayer exceeds the total horsepower of all locomotives owned by, or leased to, the
76 taxpayer on the last day of the preceding taxable year. The commissioner shall
77 establish and maintain rules governing the determination of total horsepower under this
78 subparagraph. The rules may use for this purpose reports of the United States Secretary
79 of Transportation, in consultation with the United States Surface Transportation Board
80 or any other similar report prescribed by the federal government, if the commissioner
81 determines that such federal report accurately prescribes methodology for determining
82 total horsepower of locomotives of taxpayers in this state.

83 (7) 'Railroad signal, communication, or other operating system' means an appliance,
84 method, device, or system, including hardware and software, which is used to operate a
85 railroad or to improve safety or capacity of railroad operations, including a signal, an
86 interlocker, an automatic train stop, or a train control or cab-signal device.

87 (b) A taxpayer shall be allowed a tax credit against the tax imposed under this chapter in
88 an amount equal to 50 percent of the cost of new qualified freight rail infrastructure
89 property and qualified locomotive property placed in service during the taxable year.

90 (c) In the case of the leasing of locomotives:

91 (1) Only the lessor is eligible for the credit; and

92 (2) Total horsepower under subparagraph (a)(6)(B) of this Code section shall be
93 determined with respect to all locomotives owned by, or leased to, the lessee.

94 (d) If a credit is claimed and allowed under this Code section with respect to the cost of
95 any qualified freight rail infrastructure property or qualified locomotive property, the basis
96 of such property shall be reduced by the amount of the credit so determined.

97 (e) In no event shall the total amount of the tax credits under this Code section for a
98 taxable year exceed the taxpayer's income tax liabilities. Any unused tax credits shall be
99 allowed the taxpayer against the succeeding 20 years' tax liabilities. No such tax credits
100 shall be allowed the taxpayer against prior years' tax liability.

103 **SECTION 2.**

104 This Act shall become effective January 1, 2011, and shall be applicable to all taxable years

105 beginning on or after January 1, 2011.

107 All laws and parts of laws in conflict with this Act are repealed.